

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

ROBERT CONTRERAS,)
)
Plaintiff,)
)
vs.) No. CV 11-01480-SVW
)
)
CITY OF LOS ANGELES, JULIO)
BENAVIDES; MARIO FLORES; and)
DOES 1 - 10, Inclusive,)
)
Defendants.)
_____)

REPORTER'S PARTIAL TRANSCRIPT OF TRIAL PROCEEDINGS

LOS ANGELES, CALIFORNIA

TUESDAY, JANUARY 31, 2012

OPENING STATEMENTS

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United States Courthouse
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Los Angeles, California 90012
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1 **LOS ANGELES, CALIFORNIA; TUESDAY, JANUARY 31, 2012;**

2 **11:30 A.M.**

3 (PARTIAL TRANSCRIPT)

4 - - - - -

5 (Recess)

6 (Open Court - Jury Present)

7 THE COURT: Members of the jury, we're about to begin
8 the case. The court allows each side to make a brief opening
9 statement. Just by virtue of the terminology, it's called
10 opening statement, not opening argument. At this point, there
11 is no evidence, so the purpose of opening statement is to give
12 you sort of an overview of what each side expects to introduce
13 as evidence, but it's not the place to argue what the evidence
14 means. We have to wait to see the evidence. And at the end of
15 the case, the lawyers will be allowed to address you again, and
16 that will be called final argument. At that point, they are
17 allowed to argue because there will be some evidence they will
18 urge you to construe as they see it.

19 With that in mind, I will allow Mr. Galipo to make
20 the opening statement on behalf of his client, Mr. Contreras.

21 MR. GALIPO: Thank you, Your Honor.

22 Good morning, ladies and gentlemen. As Judge Wilson
23 just told you, I'm going to try to give you a little bit of an
24 outline about what to expect in terms of the evidence you will
25 hear in this case. You will hear from witnesses, and you're

1 going to have some photographs and things of that nature to
2 look at.

3 This incident happened on September 3rd, 2005, quite
4 sometime ago. It happened at about 7:30, 7:40 p.m.

5 THE COURT: Mr. Galipo, I think the reporter is
6 having a little trouble hearing you. If you just want to sort
7 of get that microphone a little closer to you.

8 MR. GALIPO: I'll keep my voice up.

9 THE COURT: Thank you.

10 MR. GALIPO: It happened about 7:30 or 7:40 p.m. At
11 that time, the two defendants -- Officer Benavides and Officer
12 Flores -- were driving together in a patrol vehicle working as
13 uniformed officers for the LAPD. While they were on patrol,
14 they heard shots being fired. It sounded to them like they
15 were coming from more than one weapon. They drove in the
16 direction of hearing those shots and were informed by a
17 civilian that the van may have somehow been involved in the
18 shots. They then followed that van.

19 They called for back up and an airship, which is a
20 helicopter, and at some point, a second unit got in behind
21 them. That second unit had in it officers Savedra and
22 Ballesteros, those will be the first four witnesses of this
23 trial: Officer Benavides, Officer Flores, Officer Savedra and
24 Officer Ballesteros.

25 When the second unit got behind the van, they turned

1 on their emergency lights. And some distance later, maybe
2 about 20 or 30 seconds later, their van pulled into the parking
3 lot of a Jack in the Box. The Jack in the Box is located at
4 Florence and Broadway. And you will see some photographs of
5 the Jack in the Box and where the van and the two vehicles
6 behind the van came to a stop.

7 There was a Jack in the Box video that shows, in a
8 not very fluid way -- kind of like a segmented video of the van
9 coming in with the police officers behind the van. What you
10 see on the video -- and you'll see a few stills from that
11 video, is you see the passenger side door, the sliding door of
12 the van, opening, just prior to the van coming to a complete
13 stop, and you see a leg with a shoe attached to it coming out
14 of the sliding glass door. And you'll have, at some point, a
15 blowup of that to look at, and you can see the tennis shoe and
16 the pants coming out of the van.

17 And you will see other evidence and hear evidence of
18 what Mr. Contreras was wearing that day. He was wearing
19 gray -- light-gray sweatpants, a gray matching sweatshirt
20 encased with tennis shoes. And you will see other photographs
21 of where he finally was shot, which I'll explain in a moment,
22 of his clothing, including the tennis shoes and sweatpants
23 which you will see match the clothing coming out of that van.

24 You will hear evidence that Mr. Contreras ran --
25 panicked and ran from the van. You will hear his perception

1 and allegation of what happened from that moment, and you will
2 hear the officers'. The timing, from the time the van came to
3 a stop, to the time the last shots were fired, is about 20 to
4 30 seconds, and you're going to hear what happened during that
5 time frame. The officers, at least Officer Benavides and
6 Officer Flores, will say that Mr. Contreras got out of the
7 driver's side of the van, not the passenger side.

8 Mr. Contreras says he got out of the passenger side.

9 The officers will say that Mr. Contreras got out with
10 a gun in his hand. Mr. Contreras will say he did not get out
11 with a gun in his hand. Officer Flores will say that when
12 Mr. Contreras got out of the van, he had a dark baseball cap on
13 and a bandana covering part of his face. Officer Benavides
14 will say he didn't have a hat on but had the bandana on over
15 part of his face. Officer Savedra, who was also involved in
16 pursuing Mr. Contreras, will say he did not have a hat or
17 bandana on as he was running. Mr. Contreras will say he wasn't
18 wearing that hat or bandana.

19 In any event, he runs, and he runs going -- I'll show
20 you just a few more photos which you'll be able to see later,
21 but this photo is showing part of that parking, and it's facing
22 going eastbound on Florence. So Mr. Contreras is now running
23 down the sidewalk as fast as he can on the north sidewalk of
24 Florence going eastbound, and you're going to see some pictures
25 along that path going eastbound on Florence.

1 And at the end of approximately a block -- we're
2 talking about a football field approximately -- you're going to
3 see a driveway that's just adjacent to where you see the
4 muffler photograph. Mr. Contreras eventually runs -- takes a
5 left, which would be going north, into that driveway; and you
6 will see other pictures showing what that driveway or alleyway
7 looks like. The driveway or alleyway, you'll find out, is
8 important because a group of shots happened in that area.

9 As Mr. Contreras is running down -- he was 19 years
10 old at the time -- as he was running down the sidewalk --
11 basically running as fast as he could, he felt, because he was
12 pumping his legs, he felt his cell phone, which he did have a
13 cell phone, and you're going to see pictures also of the cell
14 phone, and you're going to even see the cell phone. And here's
15 a picture of the cell phone, and you will actually see the cell
16 phone. He had the cell phone in his right pocket of his gray
17 sweatpants, and from pumping his legs as he is running, he felt
18 the cell phone starting to come up some, and he at some point
19 reached into his pocket to hold that cell phone in place and
20 put it back in his pocket. He did that as he is running down
21 the sidewalk.

22 At about that time -- and he heard no warning prior
23 to that -- he heard a shot or shots and felt an immediate
24 impact to the back of his left ankle. And that's where the
25 first shot struck him. The first shot and all the shots on the

1 sidewalk were fired by Officer Benavides. Officer Benavides
2 was the first in the pursuit, and you'll hear about his
3 position. Officer Flores was behind him with his gun pointed
4 towards the ground, never fired on the sidewalk, and Officer
5 Savedra was behind both of them. Officer Savedra never fired
6 on the sidewalk, and you will hear from Officer Savedra that he
7 never saw Mr. Contreras with a gun in his hand turning towards
8 the officers with a gun in his hand as he was running down the
9 sidewalk. The reason Officer Benavides will tell you he fired
10 as he was running away from him on the sidewalk is because
11 Officer Benavides will say he had a gun, turned to his left,
12 pointed in the direction of Officer Benavides. Then we get to
13 the alley.

14 After Mr. Contreras is struck in the back of the left
15 ankle, he is now skipping, limping into the alley, gets about
16 halfway into the alley, and you'll see from the photos and hear
17 from other evidence it's not a very long alley. You'll see it
18 was gated at the other end and locked. There was some type of
19 a trash dumpster in the alley.

20 But Mr. Contreras, upon getting in the alley, is now
21 feeling his left leg starting to go cold and numb as a result
22 of the gunshot to his leg. He starts reaching down and
23 stopping -- and he will explain to you -- grabbing his left leg
24 in the area of his knees with both of his hands with his back
25 to the mouth of the alley. It was at that point that he heard

1 four more shots ring out without any warning and was struck
2 multiple times in the back, including the center of the spine,
3 at the area of C-7 to T-1, T-2, and some other areas in the
4 center of his spine. The locations of the gunshot wounds --
5 you will hear evidence through medical records, through
6 photographs and through Mr. Contreras's testimony as to where
7 he was struck in the back because he still has scars in those
8 areas to this day. Mr. Contreras immediately went down and
9 felt his whole body lose sensation and feeling from his neck
10 down as a result of those shots in the alley.

11 Now, the officers will have a different version of
12 what happened, and you're going to hear both sides. The
13 officers will say that when they got to the mouth of the alley,
14 Mr. Contreras turned, was facing them, face to face as I'm
15 facing you now, had a gun in his hand and was pointing the gun
16 at them. It was at that time that the officers will say that
17 they each fired a couple of shots at Mr. Contreras.

18 Mr. Contreras was then approached. According to
19 Officer Flores, he never lost sight of him and almost
20 immediately after he was shot, he approached him with Officer
21 Benavides and Officer Savedra, who was the third officer, came
22 up as well. They looked on Mr. Contreras, around
23 Mr. Contreras. The evidence will be, ladies and gentlemen,
24 there was no gun on him, no gun in his hand, and no gun
25 anywhere in the alley.

1 As a result of the investigation, they checked the
2 sidewalk area, the businesses, the roof top, everywhere. There
3 was no gun found.

4 Mr. Contreras has recollections as to what was done
5 at the time after the shooting, some of which was one of the
6 officers reached into his right pocket where his cell phone was
7 at the time of those last group of shots and took the cell
8 phone out of his pocket at some point. He is not sure what
9 happened to it afterwards. There's some suggestion, you'll
10 hear through the evidence, that it may have been kicked by a
11 paramedic. You'll have to listen to that evidence and decide.

12 Now, you'll hear training from the officers that they
13 have with respect to when they can use deadly force, and you'll
14 hear the acronym IDOL. It stands for Immediate Defense Of
15 Life. These officers will tell you that, based on their
16 training, they can only use deadly force in immediate defense
17 of life situation, and they have to justify each and every shot
18 and give a warning when feasible. The officers will also tell
19 you that based on their training, if Mr. Contreras had his back
20 to them when they shot him, that would not be an IDOL
21 situation. So you're going to listen to the testimony and
22 decide.

23 After calling the four officers to hear their
24 versions of what occurred, we're going to call a paramedic;
25 we're trying to get one of the doctors here to talk about the

1 areas of the gunshot wounds. You'll hear from Mr. Contreras,
2 perhaps a detective or two and perhaps a police practice
3 expert.

4 At the end of the case, we're going to be asking you
5 for a finding that both Officer Benavides and Officer Flores
6 used excessive force -- in this case, deadly force, by shooting
7 Mr. Contreras in the back when he was unarmed, without warning.
8 Thank you very much.

9 THE COURT: Do the defendants wish to make an opening
10 statement?

11 MR. MILLER: With the court's permission, yes.

12 THE COURT: Mr. Miller.

13 MR. MILLER: I expect the facts in this matter will
14 show the plaintiff, Mr. Contreras, a felon, could have, should
15 have, stopped his drug-fueled sprint through South Los Angeles
16 on September 3rd, 2005. If he had stopped, shown his hands at
17 any time, the events would not have happened and we wouldn't be
18 here.

19 MR. GALIPO: I apologize. Improper argument.

20 THE COURT: It sounds that it is. I'll sustain the
21 objection.

22 MR. MILLER: The testimony will establish that out of
23 Mr. Contreras's mouth, that he says he continued to run even
24 after knowing he was shot because he didn't want to be hassled
25 by the cops. So how did all this start?

1 Several gunshots, gunshot blasts are heard south of
2 officers' location. LAPD officers Julio Benavides and Mario
3 Flores -- then with approximately ten years and five years of
4 experience on the job respectively, immediately responded from
5 their location at 60th and Broadway in Newton Division of
6 Los Angeles.

7 We'll be becoming familiar with these maps, with
8 relevant areas being 60th Street, Broadway, one street to the
9 east is Main, and the Jack in the Box ultimately at Florence
10 and Broadway. The officers go towards the shots. They see
11 people ducking and moving. They make a left onto 61st Street
12 and several persons in an excited and -- fashion and start
13 speaking in Spanish, saying, The van, the van, the shots are
14 coming from the van. The officers see a van. There's only one
15 van on the street. They commence what is called a following.

16 As I indicated, I'm deputy city attorney Craig
17 Miller, along with Jeff Plowden. We represent Officer Julio
18 Benavides and Mario Flores, who are being sued for allegedly
19 using excessive force. Opening statement is kind of like
20 looking at the menu; it's a preview of what you expect. You
21 know what you think you would expect having heard a menu or see
22 the end result, but this case unfolds starting at 7:30 to
23 7:40 on September 3rd, 2005. It has to be viewed from that
24 perspective as these facts emerge rather than what the end
25 result is.

1 What the opening statement lets you know is what we
2 expect the evidence to hear, and that's what I will try and do
3 at this point. The parties to this trial are Robert Contreras.
4 He'll tell you that he had recently graduated high -- from a
5 high school that he can't remember the name.

6 MR. GALIPO: Your Honor -- I apologize, Your Honor.
7 I think that goes to the damage issue.

8 THE COURT: I think you're right.

9 MR. MILLER: He will tell you that he was at his play
10 cousins' or a cousin's house of some kind, and that he was
11 getting high on a drug called primos, a mixture of marijuana
12 and cocaine. He called a friend named Edward de la Cruz to
13 pick him up. The defendants are Julio Benavides, who at that
14 time was a police officer III and is now a homicide detective
15 for the City of Los Angeles. The other defendant is Mario
16 Flores, a police officer rank II, for the City of Los Angeles,
17 who continues on patrol.

18 As I indicated, we're going to become familiar with a
19 certain location starting at 60th street, going down to 61st,
20 which is the next street. We go across 61st to Main. We'll
21 come down Main Street, and there are radio broadcasts as all
22 this occurs. The officers are saying what they observed, and
23 that they are observing a greenish-gray Nissan Quest van that
24 they have just been told is involved in an assault with a
25 deadly weapon, a potential attempted-murder situation. The

1 officers will tell you based on their training and experience
2 that this part of South Los Angeles is economically depressed,
3 it's gang-ridden by a major Crip gang that is often involved in
4 feuds and rivals. And when they hear gunshots, a van driving
5 away, the excited utterances, they think a drive-by shooting
6 has just been committed by a rival gang and start acting
7 accordingly.

8 They don't instantly light up the van because they
9 need backup because of the dangerousness of the situation.
10 They get the backup at approximately -- maybe it's easier if I
11 do it this way -- at 64th and Broadway, when Officer Savedra
12 and Ballesteros join.

13 At that point, the vehicle -- you'll hear the radio
14 dispatch -- continues southbound at a slightly higher rate of
15 speed than it had been going. You can hear the sirens of
16 Officer Benavides and Officer Flores's unit. You are going to
17 get the context of this case that as one goes south, the
18 numbered streets get larger. Generally, the numbered streets
19 run east-west except for Florence, which is where 72nd Street
20 would be. The named streets generally run north-south.

21 In terms of instrumentalities in this case, you're
22 going to hear and learn about an officer's training and
23 experience which reasonably led them to make conclusions about
24 what they were likely to encounter based on the facts given to
25 them. This training and experience is largely in place, you'll

1 hear, to keep the officers and suspects safe. We'll hear a bit
2 about firearms, we'll hear about police following pursuits,
3 radio codes and communications. This will establish the
4 timeline that it is approximately three minutes from the call
5 of AWD just occurred and the following to the code six in the
6 alley for investigation.

7 You will also hear from Mr. Contreras that his
8 sprint, as fast as he could from the Jack in the Box, across to
9 227 West Florence, took 10 to 13 seconds from the time he got
10 out of the car until he was shot. The officers estimate that
11 that was about 20, but the distance is approximately 100 yards,
12 with a lot of things happening in that time.

13 You will also hear that officers are trained to react
14 to a situation as presented to them by the suspect. Basically,
15 they'll tell you the suspect's actions drive an incident. The
16 officers will tell you they are trained that they can use
17 reasonable force to overcome resistance, prevent escape, make
18 an arrest. In this case, they were trying to make an arrest to
19 prevent escape.

20 You will hear that the officers' expectations about
21 what they are likely to encounter in a foot pursuit if they
22 believe the suspect has just committed or been part of an
23 assault with a deadly weapon in a drive-by shooting. They
24 expect, unfortunately, a potentially violent, if not deadly,
25 confrontation from an escaping felon.

1 The date of the incident is September 3rd, 2005,
2 around 7:30. It's a later summer day with generally
3 unremarkable weather. The incident started around dusk or
4 twilight. The sun was setting rapidly. From the time of
5 hearing the shots to the shooting of Mr. Contreras on the last
6 occasion, you will hear that the sun seemed to dim a lot in
7 that last three minutes.

8 The issue for you to decide in this case, based on
9 the facts as we expect them to come out, will be did plaintiff
10 prove the officers acted unreasonably under the circumstance.

11 MR. GALIPO: Your Honor, I think that is improper as
12 to what the claims are, what I have to prove, for opening
13 statement.

14 THE COURT: Well, I think you're right, again. I
15 think that we shouldn't get into legal questions. It should
16 just be overview of what the witnesses will say or what the
17 other evidence will be.

18 MR. MILLER: Thank you, Your Honor.

19 THE COURT: I sustained your objection.

20 MR. MILLER: So the circumstances you are going to
21 hear as they unfolded at the time are when the officers
22 proceeded onto 61st, they commenced the following: Following
23 the only van that the citizens had identified as being in the
24 area and the shots had come from. They get the additional
25 unit. They continue south on 64th and Broadway, which is a

1 left turn. Officer Benavides is driving a marked black and
2 white car in full uniform. He hits the lights and sirens at
3 about 64th and Broadway. He has the police unit backing them
4 that is also a black and white with uniformed officers. The
5 second unit doesn't have a light bar, but it has a
6 forward-facing red light. The chase goes approximately eight
7 blocks. Suddenly and unexpectedly, there's the left turn into
8 the Jack in the Box.

9 The Officer Benavides doesn't see anyone getting out
10 of the passenger side; he is focused on the driver's side.
11 Officer Flores sees two people get out of the passenger side of
12 the van. At no time during this vehicle chase did the vehicle
13 stop. Plaintiff will tell you he knew the police were behind
14 them. He will claim that he was asking the van to stop, but
15 nobody in the vehicle stopped. No one is observed throwing out
16 any weapons, discarding any evidence during this pursuit.

17 When the van makes the left turn, people get out.
18 The officers stop their vehicle. Officer Benavides sees the
19 driver, plaintiff Robert Contreras, has a gun in his hand in
20 the driveway. The suspect is wearing a blue bandana across his
21 face, a dark-blue bandana. Officer Benavides will tell you he
22 did not have a chance to draw his weapon as Mr. Contreras
23 turned in his direction upon getting out of the van. Plaintiff
24 takes off running to the southeast. That's towards 227 West
25 Florence.

1 Officer Benavides, as he is getting out of the
2 vehicle, will tell you he is unholstering his gun because he
3 believes this may escalate into a deadly force situation based
4 on everything known to him at that time.

5 During the foot pursuit, he is yelling repeatedly,
6 Stop, stop, police; drop the gun. Even at end he is saying
7 that. Officer Flores will tell you he is getting out of the
8 car. He sees two persons exit the passenger side and he sees
9 the driver. He sees Robert Contreras by the driver's door.
10 Says Contreras has a gun in his hand. It is a blue steel gun,
11 which is really a charcoal-gray or black. Officer Flores also
12 begins a foot pursuit, and he pulls his firearm believing it
13 will escalate into a deadly force situation. He sees that
14 Mr. Contreras is wearing a bandana and a baseball hat lowered
15 on his head. He pursues. At some time during the pursuit, he
16 yells, Stop, stop, police. You will also hear from Officer
17 Savedra and his viewpoint that after he saw Contreras exit the
18 driver's door with a gun, he temporarily lost sight of
19 Mr. Contreras, and that he is following some distance back from
20 the officers; that he did not have a shot at Mr. Contreras; he
21 did not see Mr. Contreras turning anything other than his head
22 after he initially saw him.

23 Plaintiff then intends to call Officer Ballesteros,
24 who will say that he saw suspect exit the van and go west. As
25 Mr. Contreras is running east on Florence, according to the

1 officers, he looks like on two occasions. He is turning,
2 according to the officers, in a counterclockwise direction so
3 he is facing east, he is turning north, coming back to the
4 west. His right hand, you will hear, according to the
5 officers, is coming under his left, and he's turning and
6 twisting back at him -- at the officers. Officer Benavides is
7 then in the lead. The first time he says that, he fires two
8 rounds. Those rounds have no apparent affect. A few seconds
9 later, and a short distance, again, Mr. Contreras turns from
10 running east, counterclockwise, bringing his arm under -- his
11 right arm under, showing the firearm to the officers. Officer
12 Benavides fires another two rounds. From Officer Benavides's
13 perspective, he doesn't know if they have any effect.

14 Mr. Contreras will tell you he knew he was hit; he
15 wasn't going to give up; he continued to skip, run, jaunt as
16 fast as he could because he was trying to get to a place of
17 safety. You will hear Mr. Contreras say, I knew nobody in the
18 area; I was just going to run. Coincidentally, you will also
19 hear from Mr. Contreras that as he was running, the -- he has a
20 cell phone in his pocket. The cell phone is coming out of his
21 pocket, and he says he grabs it in part and pushed it back in.
22 This is Exhibit 309. The cell phone. The color of it, as the
23 officers will testify, is roughly blue steel. You'll be able
24 to see it's dimensions, it's length, approximately
25 four-and-a-half, five inches. It's width, an inch and a half,

1 it may be two inches as tapered with a short antenna. The
2 officer will tell you they never saw a cell phone in his hand,
3 but that they saw a gun -- that under the circumstances, they
4 believed he had a gun.

5 So Mr. Contreras continues to run. He is out of the
6 officers' sight for a matter of somewhere between two to five
7 seconds, when he gets into this alley at 227. At 227 the
8 officers slow down because they don't know exactly where
9 Mr. Contreras is. Officer Benavides will tell you that he
10 paused for a second and started doing something called pieing,
11 trying to give more time and space so that he could clear the
12 alley to see if anybody was down there.

13 As Officer Benavides is pieing the alley, he is
14 surprised he sees Mr. Contreras there. Officer Benavides has
15 his flashlight in his left; his handgun in his right. He
16 lights up Mr. Contreras. Mr. Contreras turns towards Officer
17 Benavides. Officer Benavides is further east. He is to the
18 right of Officer Flores. He sees Mr. Contreras come around,
19 rotating his upper body at him. Officer Benavides fires two
20 shots at that point. Mr. Contreras goes down. Mr. Contreras
21 admits he turned or twisted with the shots.

22 Officer Flores will tell you he is to west --
23 somewhat to the west and a little in front of Officer
24 Benavides. What he sees when he is trailing across the area
25 that Officer Flores and Officer Benavides has cleared, is he

1 sees the left side of Mr. Contreras. That he sees the rib cage
2 area. He sees in his right hand what he believes to be a gun.
3 He fires because he believes that Mr. Contreras is going to use
4 that gun and fire at him. He fires two shots. The officers
5 will tell you they fired two shots because that stopped the
6 threat.

7 They will tell you where they were aiming and that,
8 unfortunately, the bullets didn't hit where they were aiming.
9 The officers will tell you, from their surprise, they had a
10 slight lag from seeing him to being able to draw their gun and
11 fire.

12 At that point, you will hear that other officers
13 responded. You will hear the radio broadcast in which you'll
14 hear Officer Benavides testify here, you'll hear his voice
15 about what he was asking for: Additional units. The officers
16 don't agree on every point in every sequence, and other people
17 also don't agree. Everyone had their perspective and their
18 memory of the time of what occurred. You will hear from a
19 Sergeant Morales who is the first supervisor on the scene who
20 came some two minutes after the incident. She saw, when she
21 approached, the cell phone by Mr. Contreras's side. She, at
22 first, will tell you she thought there may be a gun. There was
23 a dark object next to him. When she finally got close enough,
24 she saw that it was a cell phone. She then watched as the
25 paramedics came. The paramedics came when called and kicked

1 the cell phone, and you will see it in the place that it is
2 photographed.

3 The paramedics, under normal circumstances, would cut
4 off a bandana, not care if somebody was wearing a hat. They
5 would be tossed aside. You will hear that Mr. Contreras was
6 also hit under the arm, under his armpit, called the
7 mid-axillary area, with a bullet. The path and direction of it
8 by the doctors is unknown. It exited somewhere on his back
9 side. He also had another shot on his hip side area. That
10 is -- came out towards his buttock area. The medical
11 professional will tell you he cannot say which way it came in,
12 which way it exited.

13 You will hear at all times in this case that the
14 officers were forced to make a series of split-second life or
15 death decisions in their mind. How that -- this compared with
16 their training and that they believed at all times when
17 Mr. Contreras was turning, that he had a gun, that he presented
18 an immediate defense of life situation to them.

19 Plaintiff will undoubtedly deny that he had a gun
20 that evening and that he was no threat. You will be able to
21 hear the reasonableness of the facts that led the officers to
22 believe he was a threat under the circumstances.

23 Based on the totality of the circumstances, the facts
24 as I expect them that you will hear, I believe the evidence
25 will establish, and for no reason other than the evidence

1 establishes, you will be able to make a defense verdict. The
2 facts will show who caused this incident.

3 THE COURT: Okay. Let's take the lunch recess. It's
4 now 12. Let's come back promptly at 1:00. In other words, I'm
5 trying hard to do what I said: maximize your time. So I can't
6 begin until you are all here. Come back at three or four to
7 1:00. And then we'll go right to 5:00. Have the witness on
8 the stand who is going to be next. We're going to keep things
9 going. Have a nice lunch.

10 (Proceedings concluded at 12:00 p.m.)

11 - - - - -

12
13 C E R T I F I C A T E

14
15 I hereby certify that the foregoing is a true and
16 correct transcript from the stenographic record of
17 the proceedings in the foregoing matter.

18 April 3, 2012

19 /S/_____

20 Deborah K. Gackle
21 Official Court Reporter
22 CSR No. 7106

Date

| | | |
|---|--|--|
| / | across [4] 13/20 15/8 17/20 20/24 | B |
| S [1] 23/19 | acted [1] 16/10 | back [16] 4/19 7/20 7/24 8/14 8/24 9/2 9/7 |
| 1 | acting [1] 14/6 | 10/19 11/7 18/19 19/3 19/6 19/21 22/8 23/4 |
| 10 [2] 1/11 15/9 100 yards [1] 15/11 11-01480-SVW [1] 1/9 1149 [1] 1/25 11:30 A.M [1] 3/2 12 [1] 23/4 12:00 [1] 23/10 13 [1] 15/9 19 [1] 7/9 1:00 [2] 23/4 23/7 | actions [1] 15/15 actually [1] 7/15 additional [2] 16/24 21/15 address [1] 3/15 adjacent [1] 7/3 admits [1] 20/21 affect [1] 19/8 after [8] 8/14 9/20 10/5 10/23 11/24 18/17 18/22 21/20 afterwards [1] 10/9 again [3] 3/15 16/14 19/9 ago [1] 4/4 agree [2] 21/16 21/17 aiming [2] 21/7 21/8 airship [1] 4/19 all [6] 7/25 11/25 13/21 22/13 22/16 23/6 allegation [1] 6/1 allegedly [1] 12/18 alley [14] 8/13 8/15 8/16 8/17 8/19 8/20 8/25 9/10 9/13 9/25 15/6 20/7 20/12 20/13 alleyway [2] 7/6 7/7 allow [1] 3/19 allowed [2] 3/15 3/17 allows [1] 3/8 almost [1] 9/19 along [2] 6/25 12/17 also [13] 2/10 6/15 7/13 10/18 15/7 15/13 17/4 18/11 18/16 19/18 21/17 22/6 22/9 ANGELES [10] 1/10 1/17 1/24 2/19 3/1 11/15 12/6 13/15 13/16 14/2 ankle [2] 7/24 8/15 another [2] 19/12 22/9 antenna [1] 20/1 any [6] 6/19 9/1 11/17 17/16 17/16 19/13 anybody [1] 20/12 anyone [1] 17/9 anything [1] 18/21 anywhere [1] 9/25 apologize [2] 11/19 13/6 apparent [1] 19/8 APPEARANCES [1] 2/1 approached [3] 9/18 9/20 21/21 approximately [8] 7/1 7/2 12/3 14/10 15/4 15/11 17/6 19/24 April [1] 23/18 are [17] 3/16 12/1 12/13 12/18 13/3 13/13 13/21 13/22 13/23 14/16 15/13 15/16 15/21 16/12 16/20 16/21 23/6 area [11] 7/8 8/24 9/3 10/2 16/24 19/18 20/24 21/2 22/7 22/9 22/10 areas [4] 9/3 9/8 11/1 12/8 argue [2] 3/13 3/17 argument [3] 3/10 3/16 11/19 arm [3] 19/10 19/11 22/6 armpit [1] 22/6 around [4] 9/22 16/2 16/3 20/18 arrest [2] 15/18 15/18 as [45] aside [1] 22/5 asking [3] 11/4 17/14 21/15 assault [2] 13/24 15/23 at [59] attached [1] 5/13 attempted [1] 13/25 attempted-murder [1] 13/25 attorney [2] 2/15 12/16 ATTORNEYS [1] 2/17 away [2] 8/10 14/5 AWD [1] 15/5 axillary [1] 22/7 | 23/6 backing [1] 17/3 backup [2] 14/9 14/10 Ballesteros [4] 4/22 4/24 14/12 18/23 bandana [8] 6/13 6/14 6/17 6/18 17/20 17/21 18/14 22/4 bar [1] 17/5 baseball [2] 6/12 18/14 based [7] 10/15 10/19 14/1 14/24 16/8 18/3 22/23 basically [2] 7/11 15/14 be [25] because [13] 3/17 7/8 7/11 8/10 9/7 11/24 14/8 14/9 18/2 19/16 20/8 21/3 21/5 become [1] 13/18 becoming [1] 12/7 been [6] 4/17 10/10 13/24 14/6 14/15 15/22 begin [2] 3/7 23/6 begins [1] 18/12 behalf [1] 3/20 behind [7] 4/20 4/25 5/6 5/9 8/3 8/5 17/13 being [5] 4/14 12/8 12/18 16/23 21/10 believe [3] 15/22 22/22 22/24 believed [2] 20/4 22/16 believes [3] 18/3 21/2 21/3 believing [1] 18/12 BENAVIDES [32] Benavides's [1] 19/12 between [1] 20/6 bit [2] 3/23 15/1 black [3] 17/1 17/4 18/11 blasts [1] 12/1 block [1] 7/1 blocks [1] 17/7 blowup [1] 5/15 blue [4] 17/20 17/21 18/10 19/23 body [2] 9/9 20/19 both [4] 8/5 8/24 9/12 11/5 Boulevard [1] 2/7 Box [7] 5/3 5/3 5/5 5/7 12/9 15/8 17/8 brief [1] 3/8 bringing [1] 19/10 broadcast [1] 21/13 broadcasts [1] 13/21 Broadway [7] 5/4 12/5 12/8 12/10 14/11 16/25 17/3 bullet [1] 22/7 bullets [1] 21/8 Burbank [1] 2/7 businesses [1] 10/2 but [9] 3/13 6/14 6/21 8/20 12/22 15/11 17/5 17/14 20/3 buttock [1] 22/10 |
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| <p>Care [1] 22/4 CARMEN [1] 2/15 case [11] 3/8 3/15 3/25 11/4 11/6 12/22 14/17 14/21 15/18 16/8 22/13 caused [1] 23/2 cell [18] 7/12 7/13 7/13 7/14 7/15 7/15 7/16 7/18 7/19 10/6 10/7 19/20 19/20 19/22 20/2 21/21 21/24 22/1 center [2] 9/2 9/4 CENTRAL [1] 1/2 certain [1] 13/19 certify [1] 23/15 chance [1] 17/22 charcoal [1] 18/11 charcoal-gray [1] 18/11 chase [2] 17/6 17/12 checked [1] 10/1 circumstance [1] 16/10 circumstances [5] 16/20 20/3 22/3 22/22 22/23 citizens [1] 16/23 city [7] 1/10 2/15 2/17 2/17 12/16 13/15 13/16 civilian [1] 4/17 claim [1] 17/14 claims [1] 16/12 clear [1] 20/11 cleared [1] 20/25 client [1] 3/20 close [1] 21/23 closer [1] 4/7 clothing [2] 5/22 5/23 cocaine [1] 13/12 code [1] 15/5 codes [1] 15/3 Coincidentally [1] 19/18 cold [1] 8/21 color [1] 19/22 come [7] 7/18 13/21 16/9 16/24 20/18 23/4 23/6 coming [10] 4/15 5/9 5/12 5/13 5/16 5/23 12/14 19/3 19/5 19/20 commence [1] 12/15 commenced [1] 16/22 committed [2] 14/6 15/22 communications [1] 15/3 compared [1] 22/15 complete [1] 5/12 concluded [1] 23/10 conclusions [1] 14/23 confrontation [1] 15/25 construe [1] 3/18 context [1] 14/17 continue [1] 16/25 continued [2] 11/23 19/15 continues [3] 13/17 14/14 20/5 CONTRERAS [57] Contreras's [3] 9/6 11/23 21/21 cops [1] 11/25 correct [1] 23/16 could [5] 7/11 11/14 15/8 19/16 20/11 COUNSEL [1] 2/1 counterclockwise [2] 19/2 19/10 couple [1] 9/17 court [4] 1/1 3/6 3/8 23/20 court's [1] 11/11 Courthouse [1] 1/23 cousin's [1] 13/10 cousins' [1] 13/10 covering [1] 6/13 CRAIG [2] 2/16 12/16</p> | <p>Craig.miller [1] 2/19 Cruz [1] 13/12 CSR [2] 1/23 23/21 cut [1] 22/3 CV [1] 1/9</p> <p>D</p> <p>DALE [2] 2/6 2/6 damage [1] 13/7 dangerousness [1] 14/9 dark [3] 6/12 17/21 21/23 dark-blue [1] 17/21 date [2] 16/1 23/20 day [3] 5/18 9/8 16/2 de [1] 13/12 deadly [8] 10/13 10/16 11/6 13/25 15/23 15/24 18/3 18/13 death [1] 22/15 DEBORAH [2] 1/23 23/20 decide [3] 10/11 10/22 16/8 decisions [1] 22/15 defendant [1] 13/15 defendants [5] 1/12 2/13 4/11 11/9 13/13 defense [4] 10/14 10/16 22/18 23/1 deny [1] 22/19 depressed [1] 14/2 deputy [2] 2/17 12/16 detective [2] 11/2 13/14 did [10] 6/10 6/16 7/12 7/20 11/25 16/9 17/12 17/22 18/20 18/21 didn't [3] 6/14 11/24 21/8 different [1] 9/11 dim [1] 16/6 dimensions [1] 19/24 direction [5] 4/16 8/12 17/23 19/2 22/7 discarding [1] 17/16 dispatch [1] 14/14 distance [4] 5/1 15/11 18/19 19/9 DISTRICT [3] 1/1 1/2 1/5 Division [1] 12/5 do [4] 11/9 13/2 14/11 23/5 doctors [2] 10/25 22/8 DOES [1] 1/11 doesn't [3] 17/5 17/9 19/13 doing [1] 20/10 don't [4] 14/8 20/8 21/16 21/17 done [1] 10/4 door [5] 5/11 5/11 5/14 18/9 18/18 down [13] 6/23 7/9 7/10 7/20 8/8 8/22 9/8 9/10 13/19 13/21 20/8 20/12 20/20 draw [2] 17/22 21/10 drive [3] 14/5 15/15 15/23 drive-by [2] 14/5 15/23 driver [2] 17/19 18/9 driver's [4] 6/7 17/10 18/9 18/18 driveway [5] 7/3 7/5 7/6 7/7 17/20 driving [3] 4/12 14/4 17/1 drop [1] 18/6 drove [1] 4/15 drug [2] 11/15 13/11 drug-fueled [1] 11/15 ducking [1] 12/11 dumpster [1] 8/19 during [5] 6/4 17/12 17/16 18/5 18/15 dusk [1] 16/3</p> <p>E</p> <p>each [4] 3/8 3/12 9/17 10/17 easier [1] 14/10 east [7] 2/17 12/9 14/19 18/25 19/3 19/10 20/17 east-west [1] 14/19</p> | <p>eastbound [3] 6/22 6/24 6/25 economically [1] 14/2 Edward [1] 13/12 effect [1] 19/13 eight [1] 17/6 emerge [1] 12/24 emergency [1] 5/1 encased [1] 5/20 encounter [2] 14/24 15/21 end [7] 3/14 7/1 8/18 11/4 12/22 12/24 18/6 enough [1] 21/23 escalate [2] 18/3 18/13 escape [2] 15/17 15/19 escaping [1] 15/25 ESQ [1] 2/10 establish [3] 11/22 15/3 22/25 establishes [1] 23/1 estimate [1] 15/10 even [3] 7/14 11/23 18/6 evening [1] 22/20 event [1] 6/19 events [1] 11/17 eventually [1] 7/4 every [3] 10/17 21/16 21/16 Everyone [1] 21/17 everything [1] 18/4 everywhere [1] 10/2 evidence [19] 3/11 3/13 3/13 3/14 3/17 3/24 5/17 5/17 5/24 8/17 9/5 9/23 10/10 10/11 13/2 16/17 17/16 22/24 22/25 exactly [1] 20/8 except [1] 14/19 excessive [2] 11/6 12/19 excited [2] 12/12 14/5 Exhibit [1] 19/22 exit [3] 18/8 18/17 18/24 exited [2] 22/8 22/12 expect [8] 3/24 11/13 12/20 12/21 13/2 15/24 16/9 22/24 expectations [1] 15/20 expects [1] 3/12 experience [4] 12/4 14/1 14/23 14/25 expert [1] 11/3 explain [2] 5/21 8/23</p> <p>F</p> <p>face [5] 6/13 6/15 9/14 9/14 17/21 facing [5] 6/21 9/14 9/15 17/6 19/3 facts [7] 11/13 12/24 14/24 16/9 22/21 22/23 23/2 familiar [2] 12/7 13/18 fashion [1] 12/12 fast [4] 6/23 7/11 15/8 19/16 feasible [1] 10/18 feeling [2] 8/21 9/9 felon [2] 11/14 15/25 felt [5] 7/11 7/12 7/17 7/23 9/9 feuds [1] 14/4 few [3] 5/10 6/20 19/8 field [1] 7/2 final [1] 3/16 finally [2] 5/21 21/23 find [1] 7/7 finding [1] 11/5 fire [2] 21/4 21/11 firearm [2] 18/12 19/11 firearms [1] 15/2 fired [8] 4/14 6/3 8/1 8/4 8/5 8/9 9/17 21/5 fires [5] 19/7 19/12 20/19 21/3 21/4 first [7] 4/22 7/25 7/25 8/2 19/7 21/19 21/22 five [3] 12/3 19/25 20/6 five inches [1] 19/25 flashlight [1] 20/15</p> |
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